

THE HONORABLE RICHARD A. JONES
NOTING DATE: MARCH 6, 2015

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOIRA GUNSUL,

Plaintiff,

v.

THE BOEING COMPANY, a Delaware
Company,

Defendant.

NO. 2:15-CV-00095 RAJ

**BOEING'S MOTION TO
DISMISS PLAINTIFF'S
CLAIM FOR BREACH OF
PROMISE**

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Moira Gunsul was a Project Management Specialist at The Boeing Company until May 2014, when she was discharged for excessive unexcused absences. Plaintiff subsequently filed this lawsuit alleging that Boeing violated various state and federal workplace non-discrimination laws. Plaintiff also asserted claims for breach of contract and for violations of RCW 49.52 for allegedly depriving her of wages. After this matter was removed to this Court, Boeing filed a Motion to Dismiss Plaintiff's Claims for Wage Withholding and Breach of Contract. In response, Plaintiff has now filed an Amended Complaint in which she has withdrawn her breach of contract claim, thereby apparently

1 admitting that Boeing appropriately requested dismissal of that claim.¹ Plaintiff replaces her
2 faulty breach of contract claim with an equally faulty “breach of promise” claim. As with
3 the earlier claim that she has withdrawn, Plaintiff’s new “breach of promise” claim is also
4 improper because Plaintiff fails to allege any specific fact in support of that claim. To the
5 contrary, Plaintiff effectively admits in her Amended Complaint that she is unable to
6 identify any specific promise that was breached, and is even unable to identify any specific
7 document in which any such “promise” was purportedly made. Instead, Plaintiff merely
8 speculates in her Amended Complaint that some un-named set of documents “created” an
9 unspecified promise in some unspecified manner at some unspecified time. Because
10 Plaintiff’s breach of promise claim fails to meet the pleading standards under the
11 *Twombly/Iqbal* line of decisions, Boeing respectfully asks the Court to dismiss Plaintiff’s
12 claim for breach of promise.

13 **II. ALLEGATIONS AND CLAIMS AGAINST BOEING**

14 In her Complaint, Plaintiff makes the following allegations:

15 Plaintiff is a former Boeing employee. Dkt. #8 at ¶ 5. Boeing provided Plaintiff with
16 medical leave for a health condition involving her lower back for the period of March 3,
17 2014 – April 3, 2014. *Id.* at ¶ 9 – 10. However, Plaintiff was unable to return to work until
18 April 8, 2014. *Id.* at ¶¶ 15, 16, and 20. Boeing notified Plaintiff that she needed to extend
19 her leave of absence to cover the absences from April 4th and 7th, so Plaintiff contacted
20 Aetna and requested that the approved intermittent leave apply to those absences because
21 they were a result of her lower back condition. *Id.* at ¶ 21 – 22. Aetna told her that the
22 intermittent leave did not apply, and she needed to submit additional documents to use
23 extended medical leave of absence. *Id.* at ¶ 23. On May 5, 2014, Plaintiff received a letter
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25 ¹ Plaintiff has not withdrawn her wage withholding claim. This claim therefore continues to be the
26 subject of Boeing’s previously filed Motion to Dismiss, which is noted for consideration on February
20, 2015.

1 notifying her that her absences on April 4th and 7th were not approved for leave, and on
2 May 13, 2014, Plaintiff was discharged for her unexcused absences. *Id.* at ¶¶ 30 – 31.

3 Based on these allegations, Plaintiff claims Boeing breached some unidentified
4 promise that was made at some unspecified time in some unidentified “handbook and/or
5 similar document”. *Id.* at ¶ 50. In her Amended Complaint, Plaintiff makes only three
6 references to Boeing’s purported breach of promise:

- 7 • Plaintiff alleges, “Defendant maintained an employment handbook, and/or similar
8 documents, which **created** a promise of specific job security, including a right to
9 take medical leave without being terminated.” *Id.* (emphasis added).
- 10 • Plaintiff claims she “justifiably relied upon that promise,” but she makes this
11 assertion without identifying any alleged promise. *Id.* at ¶ 51.
- 12 • Based only on her preceding allegations, Plaintiff then concludes, “Defendant
13 breached that promise by terminating Plaintiff.” *Id.* at ¶ 52.

14 The remaining allegations and causes of action in the Complaint are not the subject of this
15 motion.

16 **III. AUTHORITY AND ARGUMENT**

17 **A. Legal Standard Under Fed. R. Civ. P. 12(b)(6)**

18 To survive a motion to dismiss, a plaintiff’s complaint may not rely merely on
19 “labels and conclusions” but, instead, must “contain sufficient factual matter, accepted as
20 true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662,
21 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is
22 “plausible on its face” when “the plaintiff pleads factual content that allows the court to
23 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*,
24 556 U.S. at 678. Pleading facts that are “merely consistent” with liability does not cross “the
25 line between possibility and plausibility of entitlement of relief.” *Id.* (quoting *Twombly*, 550
26 U.S. at 557). Rather, Rule 12(b)(6) “requires more than labels and conclusions, and a

1 formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at
2 555. While factual allegations are generally taken as true and construed in the light most
3 favorable to the non-moving party, the Court need not accept conclusory allegations, legal
4 conclusions, unwarranted deductions of fact or unreasonable inferences. *Warren v. Fox*
5 *Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). Dismissal is proper “when the
6 complaint does not make out a cognizable legal theory or does not allege sufficient facts to
7 support a cognizable legal theory.” *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d
8 1034, 1041 (9th Cir. 2011).

9 **B. Plaintiff’s Breach of Promise Claim Should Be Dismissed Because She Did Not**
10 **Plead Sufficient Facts Supporting Essential Elements Of This Claim.**

11 The pleading standard under the Supreme Court’s *Twombly* and *Iqbal* decisions
12 render Plaintiff’s claim for breach of promise just as inadequate as Plaintiff’s original claim
13 for breach of contract. Plaintiff’s allegations are similarly conclusory, and she does not
14 allege any facts supporting any essential element of this claim. A plaintiff states a claim for
15 breach of promise only if she alleges the employer created an atmosphere of job security and
16 fair treatment with promises of specific treatment in specific situations, and she is induced
17 thereby to remain on the job and not actively seek other employment. *Thompson v. St. Regis*
18 *Paper Co.*, 102 Wn. 2d 219, 230, 685 P.2d 1081 (1984). Plaintiff does not identify any
19 promises of specific treatment in specific situations, or any promises at all. Instead,
20 Plaintiff’s claim that Defendant maintained “an employment handbook and/or similar
21 documents” that “created” a purported promise, is nothing more than “label and conclusion”
22 that is inadequate to support a cause of action. *See Twombly*, 550 U.S. at 555. Nowhere does
23 Plaintiff allege any facts or point to any provisions in any documents supporting her
24 conclusory allegation that Boeing “created” a promise that it subsequently breached. By
25 failing to identify any such fact (and by the speculative manner in which asserts her claim),
26 Plaintiff is effectively admitting in her Amended Complaint that she is unable to identify

1 any specific document or set of documents that contains any specific promise that was made
2 by Boeing or upon which she could have reasonably relied. Plaintiff's lack of specific
3 factual support for the existence of a promise, and her admission that she is unable to
4 identify any such promise, or any purported location of any such promise, is sufficient to
5 warrant the dismissal of her breach of promise claim.

6 Because Plaintiff failed to both (1) support her conclusory allegations and legal
7 conclusions with sufficient factual allegations identifying a promise, and (2) identify any
8 particular promise that Boeing purportedly breached, Plaintiff's complaint fails to muster
9 even the most basic factual allegations that would allow this Court "to draw the reasonable
10 inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.
11 Accordingly, her breach of promise claim should be dismissed.

12 **IV. CONCLUSION**

13 For all the foregoing reasons, Boeing respectfully requests that the Court dismiss
14 Plaintiff's breach of promise claim against Boeing.

15 DATED this 6th day of February, 2015.

16 RIDDELL WILLIAMS P.S.

17
18 By s/Laurence A. Shapero
19 Laurence A. Shapero, WSBA #31301
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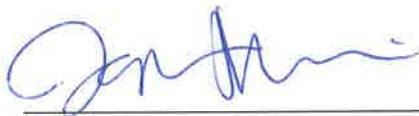
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CERTIFICATE OF SERVICE

I hereby certify that on the date below written, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 6, 2015, in accordance with 28 USC 1746.



Jazmine Matautia